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GST GOODS AND SERVICES TAX TECHNICAL INFORMATION BULLETIN

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GUIDELINES FOR SECURITY REQUIRED OF NON-RESIDENTS

This publication is not a legal document. It contains general information and is provided for convenience and guidance in applying the *Excise Tax Act* and Regulations. If interpretation problems occur, please refer to the legislation or contact any Revenue Canada Excise office.

INTRODUCTION

This document summarizes the current policy concerning the requirements for security against potential balances of GST due to Revenue Canada, Customs and Excise, from non-resident persons engaged in taxable commercial activities in Canada.

The Excise Tax Act, as amended by S.C. 1990, ch. 45 (Bill C-62), requires that security be provided to Revenue Canada, Customs and Excise by non-resident persons who meet the following conditions:

- they do not have a permanent establishment in Canada;
- they apply or are required to apply to be registered for the GST.

REGISTERABLE NON-RESIDENTS REQUIRING SECURITY

Administrative Policy

Every non-resident person who meets the conditions set out in the preceding paragraph, will be required to provide security against a potential balance of GST due to Revenue Canada, Customs and Excise as a result of its commercial activities in Canada.

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Adequate security must be posted with Revenue Canada, Customs and Excise before the application for registration of a non-resident can proceed. **However, those non-residents who have been registered will have until the end of April 1991, to post the required security with the Department.**

The amount of security required of non-resident persons for purposes of subsection 240(6) of *the Excise Tax Act*, is to be 50 per cent of the net tax that the non-resident person estimates will be remitted during the twelve month period after becoming a registrant. The maximum amount required to be posted as security is $1 million and the minimum amount is $5,000. However, the minimum is reduced to $2,500 for those non-resident performers and other persons referred to in subsection 240(2).

The amount of security due at the time of application for registration must be calculated by the non-resident.

If at any time during the twelve month period after registration the net tax remitted demonstrates that the amount of the security required is not adequate, the Department may recalculate the amount of security required to be posted for the remainder of the period. For subsequent years, the security shall be for an amount equal to 50 per cent of the net tax remittable during the previous twelve month period, subject to the minimum and maximum required amounts discussed previously.

ACCEPTABLE FORMS OF SECURITY

The Department will consider the following forms of security, in Canadian funds, as acceptable:

- cash;
- certified cheque, or money order (drawn on a financial institution that is a member of the Canadian Payments Association); and
- bonds (security posted in the form of bonds must be in a form approved by the Minister).

Bonds acceptable as security posted by non-residents include:

- a transferable bond guaranteed by the Government of Canada;
- a bond issued by a company that holds a certificate of registry to carry on the fidelity or surety class of insurance business and that is approved by the President of the Treasury Board as a company whose bonds may be accepted by the Government of Canada;
- a bond issued by a member of the Canadian Payments Association as provided for in section 4 of the *Canadian Payments Association Act*;

- a bond issued by a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the Régie de l'assurance-dépôts du Québec to the maximum permitted by the statutes under which those institutions were established;
- a bond issued by a credit union as defined in paragraph 137(6)(b) of the Income Tax Act;
- a bond issued by a corporation that accepts deposits from the public, if repayment of the deposits are guaranteed by the Government of Canada or a Canadian provincial government;
- Government of Canada bonds such as:
  - Fully registered Government of Canada Bonds
  - Canada Perpetual Bonds
  - Government of Canada Bearer Bonds.

NOTE: **Government of Canada Bonds will be accepted at market value at the time of receipt when used for security purposes. Canada Savings Bonds are not acceptable as security because they are not transferable.**

CANCELLATION OF GUARANTEE BONDS OR BANK BONDS

In practice, guarantee Bonds and Bank Bonds tendered to Revenue Canada, Customs and Excise, for security purposes, may be cancelled by the issuing agency for a number of reasons. However, these bonds will be required to remain in effect for up to five years after the effective date cancellation of the bond. All obligations with respect to the GST liabilities of the non-resident, within the time of issuance and cancellation of the bond, are to be discharged according to the terms of the bond. These obligations include paying, collecting and remitting amounts payable such as net tax, penalties, interest or other amounts payable or remittable. Revenue Canada, Customs and Excise, may make a claim against a cancelled bond for a period of up to five years in respect of tax liabilities incurred by the non-resident occurring while the bond was in effect.

REVIEW OF NON-RESIDENT'S SECURITY

The amount of security required of a non-resident will be reviewed by the Department on an annual basis to ensure that adequate security is posted against any potential GST liability.

Less than $25,000: If the amount of security required is **$25,000 or less** and the tax remittable by the non-resident should vary to the extent that an adjustment to the amount of the security of more than $2,500 is necessary, the non-resident will be obligated to adjust the security for any shortfall, or request the return of any surplus amount.

More than $25,000: If the amount of security required is **more than $25,000**, and the tax remittable by the non-resident should vary to the extent that an adjustment to the amount of the security of more than $5,000 is necessary, the non-resident will be obligated to adjust the security for any shortfall, or request the return of any surplus amount.

The Minister will inform the non-resident of any decrease in the amount of security they are required to tender. At that time the non-resident can request that any excess amount tendered as security be returned. Depending on the type of security, it may be necessary for the non-resident to replace the existing security document with another, so that any surplus amount can be returned.